

SHEA LARSEN

1731 Village Center Circle, Suite 150
Las Vegas, Nevada 89134
(702) 471-7432

1 Bart K. Larsen, Esq.
Nevada Bar No. 8538
2 Kyle M. Wyant, Esq.
Nevada Bar No. 14652
3 **SHEA LARSEN**
1731 Village Center Circle, Suite 150
4 Las Vegas, Nevada 89134
Telephone: (702) 471-7432
5 Fax: (702) 926-9683
Email: jshea@shea.law
6 blarsen@shea.law
kwyant@shea.law

7 *Attorneys for Debtor Banq Inc.*

8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF NEVADA**

10 In re:

11 BANQ INC.

12 Debtor.

Case No. 23-12378-nmc
Chapter 11
Subchapter V

Hearing Date: October 3, 2023
Hearing Time: 9:30 a.m.

13 **APPLICATION FOR ORDER AUTHORIZING AND APPROVING THE RETENTION**
14 **AND EMPLOYMENT OF GOODWIN PROCTER LLP AS**
15 **SPECIAL LITIGATION COUNSEL FOR DEBTOR BANQ INC.**

16 Debtor Banq Inc. (“Banq” or “Debtor”), by and through its undersigned counsel, hereby
17 submits this application (the “Application”), pursuant to Sections 105, 327(e), 328(a) and 1103 of
18 Title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2014 and 2016 of the
19 Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for the entry of an order
20 authorizing the Debtor to retain and employ Goodwin Procter LLP (“Goodwin Procter” or the
21 “Firm”) as special litigation counsel to the Debtor.

22 This Application is made and based upon the points and authorities below, the declaration
23 of Darryl M. Woo, Esq. (the “Woo Declaration”), attached hereto as **Exhibit B**, the papers and
24 pleadings on file herein, judicial notice of which is hereby respectfully requested, and any oral
25 argument the Court may entertain at the hearing on the Application.

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JURISDICTION AND VENUE

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2 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
3 1334(e)(2). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (b)(2)(O).
4 Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5 2. The statutory bases for relief sought in this Application are Sections 327(e) and
6 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016.

BACKGROUND

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8 3. On June 13, 2023 (the “Petition Date”), the Debtor filed a voluntary petition for
9 relief under Chapter 11, Subchapter V of the Bankruptcy Code in the United States Bankruptcy
10 Court for the District of Nevada (the “Court”). The Debtor continues to manage its assets and
11 financial affairs as a debtor in possession under Sections 1107(a) and 1108 of the Bankruptcy
12 Code. Neither a Chapter 11 trustee nor an examiner has been appointed in this case.

13 4. The Debtor is plaintiff in litigation against Scott Purcell, George Georgiades, Kevin
14 Lehtiniitty, Fortress NFT Group, Inc. d/b/a Fortress Blockchain Technologies, and Planet NFT,
15 Inc. (collectively, the “Defendants”). The Debtor sued Defendants in the United States District
16 Court for the District of Nevada, Case No. 2:22-cv-00773, asserting claims for violations of the
17 Defend Trade Secrets Act, 18 U.S.C. §§ 1832 *et seq.*, violations of the Nevada Uniform Trade
18 Secrets Act, NRS CH. 600A, violations of the Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030
19 *et seq.*, violations of the Unlawful Acts Regarding Computers, NRS 205.4765, conversion, fraud,
20 interference with prospective economic advantage, breach of fiduciary duty, aiding and abetting
21 breaches for fiduciary duties, negligence for spoliation, and unjust enrichment (the “Federal
22 District Court Action”).

23 5. The Federal District Court Action was dismissed by the District Court in an order
24 dated January 14, 2023 [Dkt. 78 in that action], dismissing the case stating at 9:13-14, “I do not
25 address arbitrability. Instead, I compel arbitration and leave the arbitrability question for the
26 arbitrator to resolve.” That dismissal and judgment based on that dismissal is the subject of a
27 pending appeal before the United States Court of Appeals for the Ninth Circuit (the “9th Circuit”
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1 Appeal”). No demand for arbitration has been made.

2 6. Goodwin Procter was lead counsel in the Federal District Court Action, and well-
3 familiar with that matter. The Debtor seeks to retain Goodwin Procter as special litigation co-
4 counsel in connection with the prosecution of claims against the Defendants, including but not
5 limited to the claims asserted in the Federal District Court Action. Going forward, the Diamond
6 McCarthy firm will be taking the lead in that action and any related prosecution of Estate claims
7 against the Defendants. *See* Woo Declaration, ¶¶ 5-7.

8 7. In addition, Goodwin Procter was and is lead counsel for defendants including Banq
9 in the matter of *N9 Advisors, LLC v. Banq, Inc., et al.*, Case No. CACE22013341, in the Circuit
10 Court Of The 17th Judicial Circuit In And For Broward County, Florida (the “N9 Action,”
11 collectively with the Federal District Court Action and the 9th Circuit Appeal, the “Special Counsel
12 Matters”). The N9 Action seeks, among other things, to enforce the terms of a convertible note
13 issued by Banq in favor of N9. Debtor believes that the N9 Action is a core matter in this
14 bankruptcy. However, to the extent that matter is permitted to move forward post-Petition, Debtor
15 seeks to retain Goodwin Procter in connection with the defense of the N9 Action. Goodwin
16 Procter’s work on the N9 Action matter going forward will be separately invoiced from its prior
17 work on the same matter, and subject to approval by the Bankruptcy Court.

18 **RELIEF REQUESTED**

19 8. Debtor seeks authority pursuant to 11 U.S.C §§ 327(e) and 328(a) of the
20 Bankruptcy Code to employ and retain Goodwin Procter as special litigation co-counsel in
21 connection with the prosecution of Estate claims against the Defendants, and to compensate
22 Goodwin Procter on a discounted hourly fee basis in accordance with the terms set forth in a post-
23 bankruptcy Engagement Agreement, which provides a 10% discount from the firm’s hourly rates
24 and an initial cap of \$50,000. Woo Declaration, ¶ 10.

25 9. Debtor is informed and believes that Goodwin Procter and its attorneys are
26 members in good standing of their respective State Bars, have previously been admitted to practice
27 *pro hac vice* before the United States District Court for the District of Nevada in the Federal
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1 District Court Action, and will be so admitted going forward. Goodwin Procter and its attorneys
2 furthermore are admitted to the United States Court of Appeals for the Ninth Circuit, and admitted
3 *pro hac vice* in the N9 Action.

4 SCOPE OF EMPLOYMENT

5 10. The Debtor seeks to retain Goodwin Procter in connection with the prosecution of
6 claims against the Defendants, including but not limited to the claims asserted in the Federal
7 District Court Action, the 9th Circuit Appeal, and any related prosecution of Estate claims against
8 the Defendants. *See* Woo Declaration, ¶ 7. Goodwin Procter's representation of the Debtor will
9 be limited to the Special Counsel Matters. Neither Goodwin Procter, Diamond McCarthy LLP
10 ("Diamond McCarthy") nor Shea Larsen, the Debtor's general bankruptcy counsel, anticipate any
11 overlap in responsibility or duplication of efforts. However, out of an abundance of caution and a
12 desire to efficiently provide legal services to the Debtor, Goodwin Procter, Diamond McCarthy,
13 and Shea Larsen will coordinate efforts to avoid duplication of work and unnecessary fees.
14 Goodwin Procter has agreed to make reasonable efforts to avoid duplication of services provided
15 by any other professional employed by the Debtor.

16 11. Debtor believes it necessary to employ Goodwin Procter as special co-counsel to
17 the Diamond McCarthy firm to render the foregoing professional services so that it may properly
18 pursue its claims, rights, and duties under the Bankruptcy Code. Further, Debtor believes that
19 Goodwin Procter is well-qualified to handle the legal matters described in the Application.

20 GOODWIN PROCTER'S QUALIFICATIONS

21 12. Debtor selected Goodwin Procter and its attorneys because of the firm's knowledge
22 of Debtor's business affairs and Goodwin Procter's general reputation, experience and knowledge,
23 and in particular, its expertise in the field of intellectual property litigation, which claims were
24 included in the Federal District Court Action and contemplated as part of the prosecution of Estate
25 claims against the Defendants going forward. Goodwin Procter and its attorneys for years have
26 been actively involved in many intellectual property litigation matters throughout the United
27 States, and were lead counsel in the Federal District Court Action. Debtor believes that Goodwin
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1 Procter has the necessary experience, expertise, and background to effectively represent it in the
2 prosecution of Estate claims against the Defendants going forward in this chapter 11 case in an
3 efficient and expeditious manner.

4 13. Darryl M. Woo will lead the Goodwin Procter team and will serve as co-counsel in
5 prosecuting the estate's claims against the Defendants. Mr. Woo has over four decades of
6 intellectual property and complex technology litigation experience, and as specially applicable to
7 the Application and Goodwin Procter's retention, he and the Goodwin Procter team have a depth
8 of experience in the Federal District Court Action, the 9th Circuit Appeal, and the subject matters
9 pertaining to the claims against the Defendants. Woo Declaration, ¶ 9.

10 14. Based on Goodwin Procter's demonstrated qualifications, Debtor believes that
11 Goodwin Procter is well qualified to represent it during its bankruptcy case and any related
12 proceedings for prosecution of Estate claims against the Defendants.

13 COMPENSATION

14 15. Subject to this Court's approval, the Debtor has agreed to retain and employ
15 Goodwin Procter on a discounted hourly fee basis, with compensation for services and
16 reimbursement of expenses to be paid on an on-going as-needed basis in pursuing Debtor's claims
17 to be asserted in any related adversary proceeding, subject to an initial cap of \$50,000. *See* Woo
18 Declaration, ¶¶ 10-12.

19 16. The fees to be paid will be on a discounted basis and subject to various limitations,
20 including an initial cap of \$50,000 (the "Retainer"). *See* Woo Declaration, ¶¶ 10-12.

21 17. Goodwin Procter seeks authority to draw from the Retainer to pay monthly, on an
22 interim basis, fees and expenses to be incurred in prosecution of Estate claims against the
23 Defendants without further order of this Court. Goodwin Procter will apply for final allowance of
24 compensation and reimbursement of expenses in accordance with the applicable provisions of the
25 Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Guidelines for Professional
26 Compensation established by the Office of the United States Trustee (the "Guidelines"), and
27 further orders of this Court, for all services performed and expenses incurred on and after the
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1 Petition Date until a Plan in this case is confirmed. *See* Woo Declaration, ¶¶ 10-13.

2 18. Pursuant to § 328(a) of the Bankruptcy Code, Debtor may retain Goodwin Procter
3 on reasonable terms and conditions. Subject to the provisions of the Bankruptcy Code, the
4 Bankruptcy Rules, the Local Rules, the Guidelines, and any other orders of the Court, it is
5 proposed that Goodwin Procter be compensated on the discounted hourly fee basis for services
6 performed as set forth herein, and to reimburse Goodwin Procter according to its customary
7 reimbursement policies subject to approval by the Court. Debtor believes that the terms,
8 conditions, and fee arrangements set forth in the Agreement are reasonable.

9 19. The Debtor believes the fee and expense policies of Goodwin Procter, as
10 specifically described above, constitute fair and reasonable terms and conditions for the retention
11 by the Debtor of Goodwin Procter as its counsel in accordance with Bankruptcy Code
12 Section 328(a). The Debtor requests that Goodwin Procter be allowed compensation for its
13 services and reimbursement for any of its fees and expenses beyond the initial Retainer amount
14 upon submission of appropriate applications therefor in compliance with all applicable orders,
15 rules, and guidelines, and subject to review and approval of the Court in accordance with
16 Bankruptcy Code Sections 330 and 331 and Bankruptcy Rule 2016.

17 **GOODWIN PROCTER'S DISINTERESTEDNESS**

18 20. To the best of Debtor's knowledge and except as otherwise set forth in this
19 Application and in the accompanying Woo Declaration, Goodwin Procter's attorneys do not hold
20 or represent any interest adverse to Debtor's estate. However, Goodwin Procter has unpaid
21 accounts receivable in the total amount of \$649,693.31 for services previously rendered and costs
22 incurred in the Federal District Court Action (the "Accounts Receivable"). Nonetheless, inasmuch
23 as the Accounts Receivable are unsecured and subordinated, Goodwin Procter and its attorneys are
24 disinterested within the meaning of § 101(14) of the Bankruptcy Code.

25 21. Goodwin Procter does not have any connection with the United States Trustee or
26 any person employed in the Office of the United States Trustee. Except as to itself as to the
27 Accounts Receivable, Goodwin Procter does not represent any creditor or other party in interest in
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SHEA LARSEN
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these proceedings. Goodwin Procter has in the past represented, currently represents and may in the future represent certain parties in interest in matters unrelated to the Debtor, the Special Counsel Matters, the chapter 11 case, or such entities' claims against or interests in the Reorganized Debtors.

22. The Debtor understands that except as otherwise set forth in the Woo Declaration:
- a) Neither Goodwin Procter nor any attorney at Goodwin Procter holds or represents an interest adverse to the Debtor.
 - b) Neither Goodwin Procter nor any attorney at Goodwin Procter is or was a creditor or an insider of the Debtor.
 - c) Neither Goodwin Procter nor any attorney at Goodwin Procter is or was, within two years before the Petition Date, a director, officer or employee of the Debtor.
 - d) Goodwin Procter does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in the Debtor, or for any other reason.

23. Based upon the Woo Declaration, Goodwin Procter is a "disinterested person," as that term is defined in § 101(14) of the Bankruptcy Code, as modified by § 1107(b) of the Bankruptcy Code. Debtor has been informed that Goodwin Procter will conduct ongoing reviews of its files to ensure that no disqualifying circumstances arise, and if any new relevant facts or relationships are discovered, Goodwin Procter will supplement its disclosures to the Court.

BASIS FOR RELIEF REQUESTED

24. Section 327(e) of the Bankruptcy Code provides that a debtor, subject to court approval:

may employ, for a specified special purpose, other than to represent the [debtor] in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e).

25. Under Section 327(e) of the Bankruptcy Code, four requirements must be met in

1 order for counsel's retention by a debtor-in-possession to be approved: "(1) the representation is in
2 the best interest of the estate, (2) the attorney represented the debtor in the past, (3) the attorney is
3 for a specific purpose approved by the court, other than to represent the debtor in conducting the
4 case, (4) the attorney does not represent or hold an interest adverse to the debtor or the debtor's
5 estate." *Stapleton v. Woodworkers Warehouse, Inc. (In re Woodworkers Warehouse, Inc.)*, 323
6 B.R. 403, 406 (D. Del. 2005) (citations omitted). The Plan Administrator submits that each of
7 these factors is satisfied with respect to Goodwin Procter, and therefore, its employment should be
8 approved under Section 327(e) of the Bankruptcy Code.

9 26. Retention of an attorney under Section 327(e) does not require the same searching
10 inquiry required for a debtor to retain general bankruptcy counsel under Section 327(a). *See*
11 *Meespierson Inc. v. Strategic Telecom Inc.*, 202 B.R. 845, 847 (D. Del. 1996) ("[S]pecial counsel
12 employed under [Section] 327(e) need only avoid possessing a conflict of interest concerning the
13 matter at hand.").

14 27. The Application should be approved for the reasons set forth below.

15 **A. Goodwin Procter is Uniquely Qualified to Continue as Co-Counsel in the**
16 **Prosecution of the Federal District Court Action and Related Claims.**

17 28. Goodwin Procter has served as counsel to the Debtor from at least as early as
18 May 16, 2022; *i.e.*, pre-petition, when the Federal District Court Action was filed. Goodwin
19 Procter was retained prior to that in order to draft the complaint and to provide the Debtor with
20 advice and counsel in connection with that filing.

21 **B. The Goodwin Procter Team is Integral to the Continued Successful Prosecution of**
22 **the Action.**

23 29. Mr. Woo has led the Goodwin Procter team in the prosecution of the Federal
24 District Court Action since the inception approximately 15 months ago. The litigation has been
25 hotly contested and involved motion practice including, among others, a motion to dismiss,
26 discovery motion practice, and a motion to compel arbitration. There has been early discovery in
27 the Federal District Court Action including, for example, discovery productions from third-parties.
28 As a result, Goodwin Procter has in-depth knowledge of the facts, circumstances and underlying

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1 legal issues of the Federal District Court Action and any related Special Counsel Matters.

2 30. The Debtor could not replace Mr. Woo and Goodwin Procter. They have
3 substantial experience and shared knowledge of the Special Counsel Matters. The only prudent
4 conclusion is that Goodwin Procter continue to represent the Debtor in the Special Counsel Matters
5 to their legal conclusion by way of settlement or litigated result. Conversely, not permitting
6 Goodwin Procter to continue handling the Special Counsel Matters most likely will injure the
7 estate by weakening an existing and successful litigation team and thereby jeopardizing further
8 recoveries.

9 **C. Goodwin Procter has No Conflicts and Entry of the Retention Order is in the Best**
10 **Interests of the Post-Bankruptcy Estates.**

11 31. Mr. Woo advises that Goodwin Procter has no conflicts,¹ and is ready, willing and
12 able to continue prosecution of the Special Counsel Matters. The Debtor believes that the
13 employment of Goodwin Procter is necessary and in the best interests of the Debtor and its estates.

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23 **CONCLUSION**

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25 ¹ To qualify for retention as special counsel under Section 327(e) of the Bankruptcy Code, an attorney does not need
26 to be a “disinterested person,” but simply must “not represent or hold any interest adverse to the debtor or to the
27 estate *with respect to the matter on which such attorney is to be employed.*” 11 U.S.C. § 327(e) (emphasis added).
28 Thus, “where employment is sought only for specific limited purposes, [§327(e)] not only eliminates the
disinterestedness requirement for a professional who has formerly represented the debtor, but also narrows the
conflict of interest issue to one of factual evaluation of actual or potential conflict only as related to the particular
matters for which representation is sought.” *In re Statewide Pools, Inc.*, 79 B.R. 312, 314 (Bankr. S.D. Ohio 1987).

32. Wherefore, Debtor requests that this Court enter an order, substantially in the form attached hereto as **Exhibit A**: (a) authorizing the Debtor to retain and employ Goodwin Procter as its special litigation co-counsel pursuant to Sections 105, 327(e), 328(a) and 1103 of the Bankruptcy Code and on the terms described herein; (b) authorizing Goodwin Procter to be entitled to the discounted hourly fee for work performed on an as-needed basis subject to an initial cap of \$50,000 as set forth in the Application; and (c) granting such other and further relief that the Court may deem just and proper.

DATED this 23rd day of August, 2023.

SHEA LARSEN

/s/ Bart K. Larsen, Esq.
James Patrick Shea, Esq.
Nevada Bar No. 405
Bart K. Larsen, Esq.
Nevada Bar No. 8538
Kyle M. Wyant, Esq.
Nevada Bar No. 14652
1731 Village Center Circle, Suite 150
Las Vegas, Nevada 89134

Attorneys for Debtor Banq Inc.

APPROVED:

/s/ Joshua Sroge
JOSHUA SROGE
CEO and Authorized Representative of
Debtor Banq Inc.

SHEA LARSEN
1731 Village Center Circle, Suite 150
Las Vegas, Nevada 89134
(702) 471-7432

CERTIFICATE OF SERVICE

1. On August 23, 2023, I served the following document(s): **APPLICATION FOR ORDER AUTHORIZING AND APPROVING THE RETENTION AND EMPLOYMENT OF GOODWIN PROCTER LLP AS SPECIAL LITIGATION COUNSEL FOR DEBTOR BANQ INC.**

2. I served the above document(s) by the following means to the persons as listed below:

☒ a. ECF System:

DAWN M. CICA on behalf of Interested Party NVF, LLC
dcica@carlyoncica.com; nrodriguez@carlyoncica.com; crobertson@carlyoncica.com;
dmcica@gmail.com; dcica@carlyoncica.com; tosteen@carlyoncica.com;
3342887420@filings.docketbird.com

SAMUEL A. SCHWARTZ on behalf of Creditor N9 Advisors, LLC
saschwartz@nvfirm.com; ecf@nvfirm.com; schwartzsr45599@notify.bestcase.com;
eanderson@nvfirm.com; samid@nvfirm.com

BRIAN D. SHAPIRO
brian@trusteeshapiro.com; nv22@ecfcbis.com; kristin@trusteeshapiro.com;
carolyn@brianshapirolaw.com

U.S. TRUSTEE - LV - 11
USTPRegion17.lv.ecf@usdoj.gov

JUSTIN CHARLES VALENCIA on behalf of U.S. Trustee U.S. TRUSTEE - LV - 11
justin.c.valencia@usdoj.gov

☐ b. United States mail, postage fully prepaid:

☐ c. Personal Service:

I personally delivered the document(s) to the persons at these addresses:

☐ For a party represented by an attorney, delivery was made by handing the document(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place in the office.

☐ For a party, delivery was made by handling the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

☐ d. By direct email (as opposed to through the ECF System):
 Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SHEA LARSEN
 1731 Village Center Circle, Suite 150
 Las Vegas, Nevada 89134
 (702) 471-7432

☐ e. By fax transmission:

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

☐ f. By messenger:

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 23, 2023.

By: /s/ Bart K. Larsen, Esq.

SHEA LARSEN
1731 Village Center Circle, Suite 150
Las Vegas, Nevada 89134
(702) 471-7432

EXHIBIT A

SHEA LARSEN
1731 Village Center Circle, Suite 150
Las Vegas, Nevada 89134
(702) 471-7432

Bart K. Larsen, Esq.
Nevada Bar No. 8538
Kyle M. Wyant, Esq.
Nevada Bar No. 14652
SHEA LARSEN
1731 Village Center Circle, Suite 150
Las Vegas, Nevada 89134
Telephone: (702) 471-7432
Fax: (702) 926-9683
Email: blarsen@shea.law
kwyant@shea.law

Attorneys for Debtor Banq Inc.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

BANQ INC.

Debtor.

Case No. 23-12378-nmc
Chapter 11
Subchapter V

Hearing Date: October 3, 2023
Hearing Time: 9:30 a.m.

**ORDER GRANTING APPLICATION FOR ENTRY OF AN ORDER
AUTHORIZING THE RETENTION AND EMPLOYMENT OF
GOODWIN PROCTER LLP AND GOODWIN PROCTER (UK) LLP AS
SPECIAL COUNSEL FOR THE DEBTOR**

Upon the application (the “Application”)¹ of the Debtor for entry of an order (this “Order”), pursuant to Bankruptcy Code section 327(e), Bankruptcy Rules 2014 and 2016, authorizing the employment and retention of Goodwin Procter LLP (“Goodwin Procter” or the

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Application.

SHEA LARSEN
1731 Village Center Circle, Suite 150
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1 “Firm”) as the Debtor’s special counsel, effective as of June 13, 2023; and having reviewed the
2 Application and the Declarations in support thereof; and having heard the statements of counsel
3 in support of the relief requested in the Application at the hearing before the Court (the
4 “Hearing”); and the Court being satisfied, based on the representations made in the Application
5 and the Declarations that Goodwin Procter does not represent or hold any interest adverse to the
6 Debtor or its estate with respect to the matters for which Goodwin Procter is to be employed; and
7 the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and entry
8 of this Order being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Debtor having
9 consented to the entry of a final order by this Court under Article III of the United States
10 Constitution; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409;
11 and this Court having found that the Debtor’s notice of the Application and the Hearing were due
12 and sufficient under the circumstances, and that no further notice need be given; and all
13 objections to the Application, if any, having been withdrawn, resolved, or overruled; and the
14 Court having determined that the legal and factual bases set forth in the Application and at the
15 Hearing establish just cause for the relief granted herein;

16 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

- 17 1. The Application is GRANTED as set forth herein.
- 18 2. The Debtor is authorized to retain Goodwin Procter as special counsel pursuant to
19 section 327(e) of the Bankruptcy Code pursuant to the terms and conditions set forth in the
20 Application.
- 21 3. Goodwin Procter shall apply for compensation earned for professional services
22 rendered and reimbursement of expenses incurred in connection with the Debtor’s chapter 11 case
23 in compliance with sections 330 and 331 of the Bankruptcy Code and the applicable provisions of
24 the Bankruptcy Rules, the Local Rules, and any other applicable procedures and orders of the
25 Court. Goodwin Procter shall also make a reasonable effort to comply with the requests for
26 information and additional disclosures as set forth in the US Trustee Guidelines, both in
27 connection with the Application and all applications for compensation and reimbursement of
28 expenses filed by Goodwin Procter in these chapter 11 cases.

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1 4. Goodwin Procter shall provide ten business days' notice to the Debtor, the Office
2 of the United States Trustee for the District of Nevada, and any official committee appointed in
3 these chapter 11 cases before implementing any periodic fee increases and shall file such notices
4 with the Court.

5 5. The Debtor and Goodwin Procter are authorized to take all necessary actions to
6 effectuate the relief granted pursuant to this Order in accordance with the Application.

7 6. To the extent there is any inconsistency between the Application, the Declaration,
8 and this Order, the provisions of this Order shall govern.

9 7. The terms and conditions of this Order shall be immediately effective and
10 enforceable upon its entry.

11 8. This Court retains exclusive jurisdiction with respect to all matters arising from or
12 related to the implementation, interpretation, and enforcement of this Order.

13 **IT IS SO ORDERED.**

14 Prepared and respectfully submitted by:

15 **SHEA LARSEN**

16 _____
17 /s/ *Bart K. Larsen, Esq.*
18 Bart K. Larsen, Esq.
19 Nevada Bar No. 8538
20 Kyle M. Wyant, Esq.
21 Nevada Bar No. 14652
22 1731 Village Center Circle, Suite 150
23 Las Vegas, Nevada 89134

24 *Attorneys for Debtor Banq Inc.*
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27
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EXHIBIT B

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7 *Attorneys for Debtor Banq Inc.*

8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF NEVADA**

10 In re:

11 BANQ INC.

12 Debtor.

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Subchapter V

Hearing Date: 10/3/2023
Hearing Time: 9:30 a.m.

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15 **DECLARATION OF DARRYL M. WOO, ESQ. IN SUPPORT OF**
16 **APPLICATION FOR ORDER AUTHORIZING THE EMPLOYMENT OF**
17 **GOODWIN PROCTER LLP AND GOODWIN PROCTER (UK) LLP**
AS SPECIAL COUNSEL FOR DEBTOR BANQ, INC.

18 I, Darryl M. Woo, state and declare:

19 1. I am an attorney at law duly admitted to practice in the State of California,
20 including all Federal District Courts in that state, as well as the United States Courts of Appeal
21 for the Ninth and Federal Circuits, and the United States Supreme Court.

22 2. I am a partner in the law firm of Goodwin Procter LLP ("Goodwin Procter" or the
23 "Firm"), in its office located at Three Embarcadero Center, 28th Floor, San Francisco, California
24 94111.

25 3. The facts set forth in this Declaration are known to me based upon personal
26 knowledge unless otherwise noted, and if called as a witness I would and could competently
27 testify thereto. To the extent any information disclosed herein requires amendment or
28 modification, I will submit a supplemental statement to the Court.

SHEA LARSEN
1731 Village Center Circle, Suite 150
Las Vegas, Nevada 89134
(702) 471-7432

1 4. I make this Declaration in support of the *Application for Order Authorizing the*
2 *Employment of Goodwin Procter LLP as Special Litigation Counsel for the Debtor Banq, Inc.*
3 (the “Application”), and to provide the disclosures required under sections 327 and 328 of the
4 Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and LR. 2014. I have read the
5 Application and incorporate its factual statements

6 5. As described in the Application, the Debtor, Banq, Inc., is plaintiff in litigation
7 against Scott Purcell, George Georgiades, Kevin Lehtiniitty, Fortress NFT Group, Inc. d/b/a
8 Fortress Blockchain Technologies, and Planet NFT, Inc. (collectively, the “Defendants”). Banq
9 sued Defendants in the United States District Court for the District of Nevada, Case No. 2:22-cv-
10 00773, asserting claims for violations of the Defend Trade Secrets Act, 18 U.S.C. §§ 1832 *et*
11 *seq.*, violations of the Nevada Uniform Trade Secrets Act, NRS CH. 600A, violations of the
12 Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030 *et seq.*, violations of the Unlawful Acts
13 Regarding Computers, NRS 205.4765, conversion, fraud, interference with prospective
14 economic advantage, breach of fiduciary duty, aiding and abetting breaches for fiduciary duties,
15 negligence for spoliation, and unjust enrichment (the “Federal District Court Action”). Goodwin
16 Procter is lead counsel of record in the Federal District Court Action. Going forward, the
17 Diamond McCarthy firm will be taking the lead in the Federal District Court Action and any
18 related prosecution of Estate claims against the Defendants.

19 6. The Federal District Court Action was dismissed by the District Court in an order
20 dated January 14, 2023 [Dkt. 78 in that action], dismissing the case stating at 9:13-14, “I do not
21 address arbitrability. Instead, I compel arbitration and leave the arbitrability question for the
22 arbitrator to resolve.” That dismissal and judgment based on that dismissal is the subject of a
23 pending appeal before the United States Court of Appeals for the Ninth Circuit (the “9th Circuit
24 Appeal”). No demand for arbitration has been made. Goodwin Procter is counsel of record on
25 the 9th Circuit Appeal.

26 7. The Debtor seeks to retain Goodwin Procter in connection with the prosecution of
27 claims against the Defendants, including but not limited to the claims asserted in the Federal
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SHEA LARSEN
1731 Village Center Circle, Suite 150
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1 District Court Action and 9th Circuit Appeal, and any related prosecution of Estate claims against
2 the Defendants.

3 8. In addition, Goodwin Procter was and is lead counsel for defendants including
4 Debtor in the matter of *N9 Advisors, LLC v. Banq, Inc., et al.*, Case No. CACE22013341, in the
5 Circuit Court Of The 17th Judicial Circuit In And For Broward County, Florida (the “N9
6 Action”). The N9 Action seeks, among other things, to enforce the terms of a convertible note
7 issued by Debtor in favor of N9. Debtor believes that the N9 Action is a core matter in this
8 bankruptcy. However, to the extent that matter is permitted to move forward post-Petition,
9 Debtor seeks to retain Goodwin Procter in connection with the defense of the N9 Action.
10 Goodwin Procter’s work on the N9 Action matter going forward will be separately invoiced from
11 its prior work on the same matter, and subject to approval by the Bankruptcy Court.

12 9. Goodwin Procter has been selected as special litigation co-counsel largely based
13 on its successful record in intellectual property litigation. The Firm’s attorneys are highly skilled
14 intellectual property litigators with a record of success in such litigation matters. Goodwin
15 Procter and its attorneys for years have been actively involved in many intellectual property
16 litigation matters throughout the United States, and were lead counsel in the Federal District
17 Court Action and currently lead counsel in the 9th Circuit Appeal.

18 10. I will lead the Goodwin Procter team and will serve as co-counsel in prosecuting
19 the Estate’s claims against the Defendants. I have over four decades of intellectual property and
20 complex technology litigation experience, and in light of my and my team having served as lead
21 counsel in the Federal District Court Action as specially applicable to the Application and
22 Goodwin Procter’s retention, we have a depth of experience in the subject matters pertaining to
23 the claims against the Defendants.

24 11. I have led the Goodwin Procter team in the prosecution of the Federal District
25 Court Action since its inception approximately 15 months ago. The litigation has been hotly
26 contested and involved motion practice including, among others, a motion to dismiss, discovery
27 motion practice, and a motion to compel arbitration. There has been early discovery in the
28 Federal District Court Action including, for example, discovery productions from third-parties.

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1 As a result, Goodwin Procter has in-depth knowledge of the facts, circumstance, and underlying
2 legal issues of the Federal District Court Action and other Special Counsel Matters.

3 12. The Debtor and Goodwin Procter have entered into an Engagement Agreement,
4 which provides among other things for an hourly fee discounted by 10%. It is furthermore
5 subject to an initial cap of \$50,000. Subject to this Court's approval, Goodwin Procter has
6 agreed to perform the services requested pursuant to the Engagement Agreement on that initially
7 capped discounted hourly fee arrangement under 11 U.S.C. § 328(a).

8 13. Goodwin Procter will be compensated for services and reimbursement of
9 expenses to be paid on an on-going as-needed basis in pursuing Debtor's claims to be asserted in
10 the Federal District Court Action, the 9th Circuit Appeal, and any related proceedings for
11 prosecution of Estate claims against Defendants.

12 14. Post-petition, Goodwin Procter will be paid a retainer of \$50,000 (the "Retainer")
13 to cover its expenses incurred by Goodwin Procter during the pendency of this chapter 11 case,
14 as well as draw down on that amount for its discounted hourly fees incurred, subject to an initial
15 cap of \$50,000. Goodwin Procter seeks authority to draw from the Retainer to pay monthly, on
16 an interim basis, fees and expenses incurred in prosecution of Estate claims against the
17 Defendants without further order of this Court.

18 15. Goodwin Procter will apply for final allowance of compensation and
19 reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy
20 Code, the Bankruptcy Rules, the Local Rules, the Guidelines for Professional Compensation
21 established by the Office of the United States Trustee (the "Guidelines"), and further orders of
22 this Court, for all services performed and expenses incurred on and after the Petition Date until a
23 Plan in this case is confirmed, subject to the fee arrangement in the Engagement Agreement as
24 will have been previously approved under section 328(a) of the Bankruptcy Code.

25 16. The fee arrangements in the Engagement Agreement were negotiated in good
26 faith and at arm's length. Goodwin Procter will be compensated for its going-forward services
27 only as set forth in the Engagement Agreement.
28

SHEA LARSEN
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1 17. At my direction, Goodwin Procter performed a conflict check to determine
2 whether any conflicts exist in this case between Goodwin Procter, the Debtor, and other
3 interested parties, including the Debtor's principals, the Debtor's bankruptcy counsel, the United
4 States Trustee, and the Defendants, and has found no disabling conflicts.

5 18. I believe that Goodwin Procter is disinterested within the meaning of 11 U.S.C.
6 § 101(14). Goodwin Procter's attorneys do not hold or represent any interest adverse to Debtor's
7 estate. However, Goodwin Procter has unpaid accounts receivable in the total amount of
8 \$649,693.31 for services previously rendered and costs incurred in the Federal District Court
9 Action and 9th Circuit Appeal (the "Accounts Receivable"). Pursuant to the Engagement
10 Agreement, Goodwin Procter has agreed to subordinate its Accounts Receivable in favor of the
11 contingent fee arrangement between Debtor and the Diamond McCarthy firm that will be
12 assuming the lead in prosecuting the Estate's claims against Defendants. Nonetheless, inasmuch
13 as the Accounts Receivable are unsecured and subordinated, it is my belief that Goodwin Procter
14 and its attorneys are disinterested within the meaning of § 101(14) of the Bankruptcy Code.
15 Except as to the Accounts Receivable, Goodwin Procter does not hold or represent an interest
16 adverse to the Estate, or of any class of creditors or equity security holders with respect to the
17 purpose and matters for which the Firm is being employed as special litigation co-counsel.
18 Except as to the Accounts Receivable, Goodwin Procter is not a creditor, equity security holder,
19 or an insider of the Debtor. Neither Goodwin Procter, nor any attorney at the Firm, is or has ever
20 been a director, officer, or employee of the Debtor at any time.

21 19. These disclosures are based upon information reasonably available at the time of
22 submission of this Application. The Firm will supplement this Declaration as may be required
23 under the Bankruptcy Code and Bankruptcy Rules if other connections requiring disclosure
24 become known.

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I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

/s/ Darryl M. Woo

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